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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Eduardo Cue

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BURNS DOANE SWECKER & MATHIS L L P

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EXAMINER

ZURITA, JAMES H

ART UNIT

PAPER NUMBER

3625

DATE MAILED: 02/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/545,034

Applicant(s)

CUE ET AL.

Examiner

James H Zurita

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2,5-13,15-19,22-24 and 73 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2,5-13,15-19,22-24 and 73 is/are rejected.
- 7) ☒ Claim(s) 11-17 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Prosecution History

A First Office Action, 25 April 2003, rejected claims 1-72.

Applicant amendment, 30 July 2003, cancelled claim 72 and amended claims 1, 10, 11, 23, 24, 26, 27, 34, 39, 41, 51, 54-56, and 69-71.

A Final Office Action, 15 October 2003, rejected claims 1-71.

Applicant filed a request for Continued Examination on 22 March 2004. Applicant cancelled claims 3, 20, 21 and 58. Applicant amended claims 1, 4, 11, 15, 22, 24, 26, 28, 41, 56 and 59. Claims 1-2, 4-19, 22-57, 59-71 remained.

A First Office Action 12 June 2004, after the request for RCE, rejected Claims 1-2, 4-19, 22-57, 59-71.

Response to Amendment

Applicant amendment of 1 November 2004 cancelled claims 14, 25-72.

Applicant added claim 73.

Claims 2, 5-13, 15-19, 22-24 and 73 are pending and will be examined.

Claim Objections

Claims 11-17 are objected to because of the following informalities. They appear to be word processing errors.

Claim 12 refers to custom web page, while claims 11 and 13 refer to customer store web page.

Claim 16 refers to custom store software, while claim 15 refers to custom store web software.

Applicant is encouraged to review his amendment for similar errors. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2, 5-13, 15-19, 22-24 and 73 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims were amended to "...administrator not associated with the vendor." When giving the term its broadest reasonable interpretation, to include ***any type of association***, it is not clear how applicant accomplishes this limitation. An administrator would need to have knowledge of a vendor's requirements for example, requiring some type of knowledge, communication, i.e., some type of association. See also previous office action.

Response to Arguments

Applicant's arguments filed 1 November 2004 have been fully considered but they are not persuasive.

Applicant's sole argument appears to be

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Applicants respectfully submit that neither Blinn nor Henson disclose the present invention as described by claim 73. Specifically, neither of the references disclose a server system with an instantiation application that creates a custom store web page from information of the administrator computer wherein the administrator computer ***is not associated with the vendor.*** [emphasis added]

In response to this argument, the Examiner respectfully notes that applicant raised this issue on 30 July 2003. Applicant's arguments remain unpersuasive for reasons stated in prior office actions.

A "traverse" is a denial of an opposing party's allegations of fact.¹ The Examiner respectfully submits that applicants' arguments and comments do not appear to traverse what Examiner regards as knowledge that would have been generally available to one of ordinary skill in the art at the time the invention was made. Even if one were to interpret applicants' arguments and comments as constituting a traverse, applicants' arguments and comments do not appear to constitute an adequate traverse because applicant has not specifically pointed out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. 27 CFR 1.104(d)(2), MPEP 707.07(a). An adequate traverse must contain adequate information or argument to create on its face a reasonable doubt regarding the circumstances justifying Examiner's notice of what is well known to one of ordinary skill in the art. In re Boon, 439 F.2d 724, 728, 169 USPQ 231, 234 (CCPA1971).

If applicant does not seasonably traverse the well known statement during examination, then the object of the well known statement is taken to be admitted prior art. In re Chevenard, 139 F.2d 71, 60 USPQ 239 (CCPA 1943). MPEP 2144.03

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Reliance on Common Knowledge in the Art or "Well Known" Prior Art. In view of applicant's failure to adequately traverse official notice, the following are admitted prior art::

Blinn's customized web pages provide a virtual store with its own unique look and feel, as determined by the merchant's administrator.

Administrators may access and update store fronts from their computers, using the HTTP protocol, which transmits URL information from clients to a centralized server (see at least Col. 6, line 20-Col. 7, line50). Administrators use server software and merchant data to instantiate web pages without vendor input. Configuration data permits administrators to define properties and relationships for products and how the products are displayed on a custom store's pages.

like government groups, educational organizations may wish to standardize hardware and software that is used by their students. This tendency is very obvious when one registers for a course. For example, students in a calculus course would normally be asked to purchase a specific textbook. While it may be possible to attend classes and learn with another textbook, or a different edition of the same textbook, both students and teachers would suffer from the lack of standardization.

Compatibility refers to the degree to which a computer, an attached device, a data file or a program can work with or understand the same commands, formats or language as another.²

selling non-existent or incompatible products may lead to customer dissatisfaction and loss of business.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 2, 5-13, 15-19, 22-24 and 73 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blinn (US 6,058,373) in view of *Henson* (US 6,167,383).

Blinn discloses a system where multiple vendors may present their products for sale to customers. Blinn discloses that administrators who are not vendors may solely

¹ Definition of Traverse, Black's Law Dictionary, "In common law pleading, a traverse signifies a denial."

² Definition of Compatibility, MICROSOFT PRESS Computer Dictionary.

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determine *some* configuration data may. See, for example, at least Col. 12, lines 15-Col. 15, line 12. Blinn discloses that global configuration controllers (applicant's administrators) use configuration data to produce web pages for custom stores. Custom stores present these web pages to customers (applicant's members of a group other than a vendor).

Like applicant, Blinn also discloses that merchants may define *some* configuration data. See, for example, at least Col. 14, line 9-Col. 17, line 35. This feature is similar to applicant's system, where database 26 contains vendor-provided data that defines custom stores. Database 36 contains items 46 (template data), 50 (instantiation data) and 52 (administration data). Vendors provide data that is stored in database 36. The data includes template data, including base prices, basic display and discount tiers.

Blinn discloses the limitations of applicants' claims, and permits merchants, groups and organizations to create customized virtual stores on the Internet from models and templates stored in a server's databases. The customized web pages provide a virtual store with its own unique look and feel, as determined by the merchant's administrator.

Administrators may access and update store fronts from their computers, using the HTTP protocol, which transmits URL information from clients to a centralized server (see at least Col. 6, line 20-Col. 7, line 50). Administrators use server software and merchant data to instantiate web pages without vendor input. Configuration data

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permits administrators to define properties and relationships for products and how the products are displayed on a custom store's pages.

Product properties may include entries for each item, including quantity, color, size and models, item discount, item price, etc. (see at least Col. 2, lines 19-28). Blinn discloses the use of "product families", that is, products that may be bundled together for marketing purposes, creating what applicants refer to as virtual bundles.

Blinn discloses that security and access to various environments (production, development and post-development environments) may be determined via a portion of the URL. See at least Col. 14, line 55 - Col. 15, line 54.

Blinn *does not* specifically disclose that groups that use his invention may include colleges and universities. *Henson* allows customized web stores to identify what he refers to as "customer sets", according to what link a customer executed to get to the online store. A store's configuration data may be used to determine what part of an online store a customer gets to see. Customer sets, according to *Henson*, may include individual customers, businesses, organizations, federal government, etc. See at least Col. 14, lines 19-61.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made combine Blinn and Henson to include colleges and universities among the groups that create customized web stores. One of ordinary skill in the art at the time the invention was made would have been motivated combine Blinn and Henson to include colleges and universities among the groups that create customized web stores for the obvious reason that, like government groups,

educational organizations may wish to standardize hardware and software that is used by their students. This tendency is very obvious when one registers for a course. For example, students in a calculus course would normally be asked to purchase a specific textbook. While it may be possible to attend classes and learn with another textbook, or a different edition of the same textbook, both students and teachers would suffer from the lack of standardization.

Blinn and *Henson* do not use the term “non-existent” to describe aspects of his inventory. *Henson* discloses a validation warning module, which provides customers with warnings concerning product compatibility and upgrade issues. *Henson* also describes dynamically setting flags that identify critical properties of particular products, such as when a product requires a long lead-time. See at least Col. 8, line 7-Col. 9, line 8. Compatibility refers to the degree to which a computer, an attached device, a data file or a program can work with or understand the same commands, formats or language as another.³

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include software that checks and identifies products that are non-existent (i.e., no longer available). One of ordinary skill in the art at the time the invention was made would have been motivated to include software that checks and identifies products that are non-existent for the obvious reason that selling non-existent or incompatible products may lead to customer dissatisfaction and loss of business.

³ Definition of Compatibility, MICROSOFT PRESS Computer Dictionary.

Blinn and *Henson* do not specifically state that "...configuration data is independent of the vendor such that the configuration data is solely determined by the custom-store administrator..." as in applicant's latest amendment.

However, the specific relationship between vendor and administrator computer does not patentably distinguish the claimed system. Further, the recited statement of intended use, that the custom-store-administrator computer is adapted to provide configuration data to the server system, and that the server system being adapted to use the configuration data to arrange at least a portion of the custom-store web page for the use of group members, the configuration data being stored in the database do not patentably distinguish the claimed system. It would have been obvious to one of ordinary skill in the art at the time the invention was made to adapt a client machine such as custom-store administrator computer in the system taught by Blinn and *Henson* because the subjective interpretation of the use does not patentably distinguish the claimed invention.

Further, these differences are not functionally involved in the steps recited. The storing and producing steps would be performed the same regardless of the data. The limitations carry little or no patentable weight and will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to receive and store from a client computer any type of

data and produce a custom-store web page because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of the data does not patentably distinguish the claimed invention.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to James H Zurita whose telephone number is 703-605-4966. The examiner can normally be reached on 8a-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn Coggins can be reached on 703-308-1344. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Patent Examiner
Art Unit 3625
31 January 2005.


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